

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Nicholas and Geraldine Fanelli)
 Map 4, Control Map 4, Parcel 7.15) Cocke County
 Residential Property)
 Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$ -0- | \$41,000 | \$41,000 | \$10,250 |

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on October 19, 2006 in Newport, Tennessee. In attendance at the hearing were Nicholas and Geraldine Fanelli, the appellants, and Cocke County Property Assessor Margaret Sorrell.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 1998 28' x 56' Heartlander mobile home presently valued at \$37,609, two utility buildings, a wood deck and a patio located at 1385 Horizon Way in Parrottsville, Tennessee.

The taxpayers contended that subject mobile home should be valued at \$22,000. In support of this position, the taxpayers testified that they purchased their mobile home from a dealer in 1998 for \$35,654. The taxpayers maintained subject mobile home would sell for \$20,000 - \$23,000 based upon what they were told by various mobile home dealers. Prior to the hearing, the taxpayers filed a letter prepared by the manager of Ben's Home Centers in Newport which stated that subject mobile home had a retail value of \$22,000.

The assessor contended that subject property should be valued at \$40,700. In support of this position, the assessor asserted that subject home has been appraised consistent with similar mobile homes in Cocke County. The assessor's recommended reduction in value reflects that subject deck actually contains 332 square feet rather than 390 square feet as indicated on the property record card.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued as contended by the assessor of property.

Since the taxpayers are appealing from the determination of the Cocke County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the taxpayers' contention of value was based upon hearsay. The administrative judge finds that none of the individuals the taxpayers spoke with were present to testify or undergo cross-examination. Similarly, the administrative judge finds that the individual from Ben's Home Centers who prepared the written estimate relied on by the taxpayers was not present to testify. The administrative judge finds that the Assessment Appeals Commission has refused to even consider in certain situations full-blown appraisal reports when the appraiser was not present to testify. See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

In order to expedite matters, the administrative judge asked the State Valuation Coordinator for the Division of Property Assessments, Barry Monson, to determine what the N.A.D.A. mobile home guide indicates is the retail value of a 1998 28' x 56' Heartlander mobile home. Mr. Monson provided the administrative judge with book value forms indicating a value of \$43,190 using an "average" rating.

The administrative judge issued an order on October 25, 2006 taking official notice of the book values. The forms were appended to the order and the parties were allowed fourteen (14) days to contest and rebut the materials to be noticed.

The administrative judge finds that the N.A.D.A. mobile home guide constitutes the best evidence in the record and supports the current appraisal of subject mobile home.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$ -0- | \$40,700 | \$40,700 | \$10,175 |


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of November, 2006.


 MARK J. MINSKY
 ADMINISTRATIVE JUDGE
 TENNESSEE DEPARTMENT OF STATE
 ADMINISTRATIVE PROCEDURES DIVISION

c: Nicholas and Geraldine Fanelli
 Margaret Sorrell, Assessor of Property